

APPLICATION TO APPORTION BENEFICIAL USE AMOUNTS

ONLINE INSTRUCTIONS

STATE OF UTAH

DIVISION OF WATER RIGHTS

1. BACKGROUND EXPLANATIONS.

A Water Right gives the owner(s) the right to divert water from a natural source to serve a particular set of beneficial uses. A combination of one or more water rights, which serves a unique set of beneficial uses, constitutes a water use group. A Declaration of Beneficial Use Amounts declares the beneficial use amount on one or more of the water rights in a water use group. A completed Declaration of Beneficial Use Amounts form is used to update the records of the State Engineer consistent with the beneficial use amounts declared.

An Application for the Apportionment of Beneficial Use Amounts may be submitted to the State Engineer pursuant to the requirements of UTAH ADMINISTRATIVE CODE R655-16-8.

An application to the State Engineer requesting an informal adjudicative proceeding pursuant to Section 63G-4-101, *et seq.*, for the apportionment of Beneficial Use Amounts of the water rights in a Water Use Group may be submitted if:

- ◆ **an Apportionment is necessary for an administrative action on a**
 - ⇒ **Change Application, OR**
 - ⇒ **Segregation Application, OR**
 - ⇒ **Proof of Beneficial Use, OR**
 - ⇒ **Ownership Update, AND**
- ◆ **the applicant has exhausted all reasonable efforts and has been unable to produce a Declaration.**

The reasons an applicant might not be able to produce a Declaration of Beneficial Use Amounts includes:

- ◆ **It is impossible to identify and/or contact one or more of the parties or their successors in interest in the Water Use Group, OR**
- ◆ **One or more of the parties or their successors in interest refuses to participate in completing the Declaration or refuses to sign the Declaration, OR**
- ◆ **Any other problem the applicant cannot resolve, which prevents the completion of the Declaration.**

1. TO PRODUCE THE APPORTIONMENT APPLICATION FORM:

- ◆ First, if one is not already shown, type a water right number in the box provided.
- ◆ Next, to retrieve all group numbers for that right, click the "Get Group Numbers" button.
- ◆ Then, click on the group number of the water use group under consideration,
- ◆ Fill in the fields shown with the applicant name, mailing address, and phone number.
- ◆ And finally, click on the "Generate Declaration" button.
- ◆ More water right information can be found by clicking the "Water Right Data" button.

To view a summary of this water right, and its relationship to other rights, click on the "Declaration Summary Table" button. This table shows the Beneficial Use Amounts that have been previously declared.

2. TO COMPLETE THE APPORTIONMENT OF BENEFICIAL USE AMOUNTS:

- ◆ Indicate the type of administrative action requiring the apportionment of beneficial use amounts and the water rights that will or are involved in the administrative action.
- ◆ Provide a sworn and verified affidavit explaining in specific detail the efforts that have been made to complete a Declaration of Beneficial Use Amounts.
 - ⇒ The attempts to identify and contact the parties or their successors in interest, OR
 - ⇒ The attempts to reach agreement with the parties or their successors in interest, OR
 - ⇒ Other efforts made without success.
 - ⇒ The issues that are preventing completion of the Declaration.
 - ⇒ See below for "Suggestions for Demonstrating Reasonable Effort."
- ◆ Attach to the application any documentation supporting your affidavit.
- ◆ Attach to the application all affidavits and documentation regarding beneficial use and water right ownership gathered in the effort prepare the Declaration.
- ◆ **SIGN THE APPLICATION.** By signing the application, the applicant acknowledges that the State Engineer's apportionment of the Beneficial Use Amounts of the water rights within the Water Use Group is not a general adjudication of the water rights involved under Section 73-4.

3. IF THE STATE ENGINEER ACCEPTS THE APPLICATION FOR APPORTIONMENT OF BENEFICIAL USE AMOUNTS:

- ◆ The applicant shall, to the extent possible, provide notice to the other parties pursuant to Section 63G-4-201(3)(b) that the State Engineer will apportion the beneficial use amounts of the supplemental water rights in the water use group according to the requirements of UTAH ADMINISTRATIVE CODE R655-16, *et seq.*
- ◆ After receiving documentation that the applicant notice has been sent, the State Engineer will send a request for information to each of the water users shown in the water use group or to their known successors in interest.
- ◆ The request will allow at least 30 days for water users to respond with information regarding the use of water and the beneficial uses in the water use group.
- ◆ After 30 days, the State Engineer may hold a preliminary hearing if necessary to gather additional information.
- ◆ The State Engineer will prepare a preliminary apportionment of the beneficial use amounts of some or all of the water rights in the water use group.
- ◆ The State Engineer will notify the water users in the water use group of the preliminary apportionment and will allow 30 days for the water users to contest the preliminary apportionment.
- ◆ After the 30-day contest period, the State Engineer may hold a hearing if necessary to gather additional information.
- ◆ The State Engineer will prepare a final apportionment, making any adjustments necessary based on the additional information received.
- ◆ The State Engineer will issue an Order of the State Engineer apportioning the beneficial uses and allowing 20 days to request reconsideration and 30 days for motions for *de novo* review in the district court.
- ◆ Once the periods for reconsideration or *de novo* review have run without response or once the court has issued a decision after *de novo* review, the State Engineer will update the water right records accordingly.
- ◆ Any administrative action depending upon the apportionment (change application, water right proof, water right segregation, or water right ownership update) may then move forward.

4. SUGGESTIONS FOR DEMONSTRATING REASONABLE EFFORT:

These are efforts a water user might employ in attempting to complete a Declaration of Beneficial Use Amounts. A reasonable effort must be made prior to requesting assistance from the State Engineer through an Apportionment Application.

Seek qualified professional assistance for help in resolving any of the issues preventing the completion of a Declaration.

Efforts to **identify and locate** the other water right owners in the water use group or their successors in interest might include efforts to:

- ◆ Research the State Engineer records for the other supplemental water rights in the water use group, including the hard copy files and any hydrographic survey maps.
- ◆ Research the appropriate county recorders office(s) to identify new owner(s) of property and contact them.
- ◆ Research state or federal agency records to identify new grazing allotment owner(s) and contact them.
- ◆ Contact neighboring water users and property owners.
- ◆ Research historical records (including census records, obituaries, birth records, etc.).
- ◆ Contact locate water use groups/authorities.
- ◆ Do an Internet search of the water right owner names in every reasonable area of the country.
- ◆ Contact every name identified in the Internet search by telephone.
- ◆ Maintain a log of all efforts to identify the water right owners or their successors in interest.

Efforts to **contact** the other water right owners in the water use group or their successors in interest might include efforts to:

- ◆ Contact every name identified as a water right owner or successor in interest in the water right group by telephone or in person.
- ◆ Keep a log of phone call attempts showing a least two weeks of effort at different times of the day.
- ◆ Send a certified letter, response requested, to every name identified as a water right owner or successor in interest in the water right group and then follow up 30 days later with a regular mail letter.
- ◆ Keep any returned envelopes sent to a reasonable address showing there was no forwarding address.

Efforts to **reach agreement** with the other water right owners and complete a Declaration might include efforts to:

- ◆ Meet or communicate with each of the other water user(s) to determine if there is a possibility of reaching an agreement.
- ◆ Determine whether the other water users are willing but unable to figure out how to divide the beneficial uses among the water rights in the water use group.